

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. On November 16, 1998, Mr. Galbraith began working for Airtech Engineering, Inc., inspecting and maintaining commercial heating and cooling units. Before that job, Mr. Galbraith worked for a number of years out of both the sheet metal workers' and the boilermakers' Union Halls. Immediately before starting work for Airtech, Mr. Galbraith worked for Midstates Heating and Cooling doing sheet metal work.
2. Before starting with Airtech, Mr. Galbraith had minimal symptoms in his right arm, but he had not sought medical treatment.
3. After beginning work with Airtech and handling a heavy fiberglass ladder, which Mr. Galbraith represented weighed approximately 100 pounds, he noticed tingling and numbness in his hands. He asked for a lighter ladder and was told that was all the company had. But according to Airtech's vice president, Harold Price, the fiberglass ladder only weighed 68 pounds.
4. Mr. Galbraith first sought medical treatment for his hands on November 19, 1998, when he consulted with Dr. Braham Geha. The doctor suspected carpal tunnel syndrome and referred Mr. Galbraith to Dr. Arthur A. Allen II for an EMG. On December 1, 1998, Mr. Galbraith saw Dr. Allen, who diagnosed carpal tunnel syndrome.
5. Mr. Galbraith testified he told the company that the doctors had diagnosed carpal tunnel syndrome and that he was promptly fired. But Mr. Price denied that Mr. Galbraith ever told him that he was having problems with his arms or that he had been diagnosed with carpal tunnel syndrome. According to Mr. Price, the company terminated Mr. Galbraith because he was not properly certified to work with refrigerants.
6. At the preliminary hearing, Airtech introduced the June 9, 1999 report of Dr. Allen. Dr. Allen wrote, in part:

. . . You have posed two questions for me. Number one relates to symptomatology and the duration of carpal tunnel syndrome which I determined on the basis of the electrodiagnostic study. I do not quantify the duration of time he was symptomatic but my history certainly suggests that he had been experiencing intermittent numbness and tingling of the right upper extremity for some time, certainly more than three days. The numbness and tingling was noted during the night, when he was sitting in a resting position or when driving. My history would suggest that he had experienced such symptoms on multiple occasions. **As I discussed his work with him, he talked about that as a sheet metal worker and we did not discuss his work history beyond that point.**

. . .

I would anticipate the findings in Mr. Galbraith to be those as might occur in a vocation which required repetitive tasks of his hands over a long period of time. I believe a sheet metal worker would certainly qualify for that. (Emphasis added.)

7. At his attorney's request, Mr. Galbraith saw Dr. Lynn D. Ketchum. In a May 20, 1999 letter, Dr. Ketchum wrote:

I found Mr. Galbraith to be a 63 year old, right hand dominant, ex-employee of Airtech, from which he was laid off on December 2, 1998. For most of his working career, Mr. Galbraith has been a sheet metal worker and a boilermaker, working for the union, and in so doing, has had multiple jobs; especially in the last couple of years, he has worked for several different places.

Prior to working at Airtech, he worked for Midwest [sic] Heating and Cooling. He had some symptoms of numbness, tingling, and pain in his hands, but they were really exacerbated by his work at Airtech, which brought the situation to a head. At Midwest [sic], he did metal installation, cutting and hanging of ducts, whereas at Airtech he did mainly servicing. He did a lot of all day long repetitive gripping of tin snips, and handled a 32 inch [sic] ladder and used a nut driver. His symptoms were of pain, weakness, numbness and tingling.

...

It is my opinion that this is related to his work as a sheet metal worker.

...It is my opinion, because of the hypertrophic tenosynovitis at both wrists, that repetitive gripping is contraindicated at this time until definitive treatment can be given. (Emphasis added.)

8. In addition to the Kansas workers compensation claim, Mr. Galbraith has filed workers compensation proceedings in Missouri claiming that the work he did for Midstates Heating and Cooling caused his injuries. In the claim form filed with Missouri, Mr. Galbraith stated that his carpal tunnel syndrome was caused from cutting sheet metal with hand snips.

9. The Board agrees with Judge Sample's finding that Mr. Galbraith has failed to prove that he sustained additional injury while working for Airtech during that short period of time from November 16, 1998, through December 1, 1998. As indicated above, Dr. Allen did not discuss Mr. Galbraith's work activities beyond sheet metal. And Dr. Ketchum confuses the work that Mr. Galbraith did for Airtech with the work he did for Midstates as a sheet metal worker. Nonetheless, Dr Ketchum attributed Mr. Galbraith's injuries to his work as a sheet metal worker rather than his work servicing equipment. Similar to Judge Sample, the Board is not persuaded by this record that Mr. Galbraith's job at Airtech either injured or aggravated his hands and wrists.

10. The Appeals Board adopts the findings and conclusions set forth in the preliminary hearing Order to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

1. Workers have the burden of proof to establish both their rights to compensation and to prove the various conditions upon which those rights depend.¹

2. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²

3. Because Mr. Galbraith has failed to prove that he sustained additional injury to his hands and wrists as a result of the work that he did for Airtech, the request for preliminary hearing benefits should be denied.

4. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the preliminary hearing Order dated June 25, 1999, entered by Judge Julie A. N. Sample.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
S. Margene Burnett, Kansas City, MO
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1999 Supp. 44-501(a).

² K.S.A. 1999 Supp. 44-508(g).

³ K.S.A. 1999 Supp. 44-534a(a)(2).